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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte JONATHAN J. HULL, and PETER HART

_____

Appeal 2009-009793
Application 09/532,412
Technology Center 2100

_____

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1-40. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We Reverse.

Claim 1 is illustrative:

1.   A method comprising:

extracting a first data from a display buffer, the first data being generated by a first application and being associated with a user interface from the first application;

recognizing a layout from the first data; and

using the layout to create an overlay to display a second data generated by a second application, wherein there is no direct link between the first application and the second application, and wherein the first data is extracted from the display buffer without cooperation of the first application at runtime.

The Examiner relies on the following prior art references as evidence of unpatentability:

| Stucka | US 5,596,702 | Jan. 21, 1997 |
| Kahl | US 5,936,625 | Aug. 10, 1999 |

Appellants appeal the following rejections:

1. Claims 1-26, 28-30, 32-34, and 36-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stucka.

    2. Claims 27, 31, and 35 stand rejected under 35 U.S.C. § 103(a) as
being unpatentable over the combination of Stucka and Kahl.

<div align="center">ISSUE</div>

    Based upon our review of the administrative record, we have
determined that the following issue is dispositive in this appeal:

> Under § 102, did the Examiner err in finding that Stucka
> discloses extracting data from the display buffer without
> cooperation of the first application at runtime, within the
> meaning of independent claims 1, 9, 17, 25, 29, 33, and
> 37? (*See* App. Br. 8, Reply Br. 3).

<div align="center">FACTUAL FINDINGS (FF)</div>

    1. Stucka discloses that application A issues an initialize
command. The initialize command allows the application to set
up parameters for the exchange of information with the user
interface server (UIS). (Col. 23, ll. 63-66).

    2. Stucka discloses that "[t]he initialize commend is sent to the
UIS with various command parameter data required to initialize
the user interface sessions between application A and the UIS.
The initialize command itself may be utilized multiple times by
the application to establish multiple user interface sessions."
(Col. 23, l. 66 – col. 24, l. 41).

      3. Stucka discloses that the UIS 48 utilizes the working memory
          area 78 for loading and operating on user interfaces retrieved
          from the display object store. (Col. 8, Il. 18-21).

<div align="center">ANALYSIS</div>

Appellants contend that Stucka does not disclose the limitation of
extracting the data of an application from a display buffer, particularly,
without cooperation of the application. (Reply Br. 3). Based upon our
review of the record, we find the evidence supports the Appellants' position.

The Examiner contends that Stucka discloses extracting first data
from a display buffer because the RAM operates as a working memory area
and as a display buffer. (Ans. 11). However, we agree with Appellants that
the Examiner has not established how the extraction is performed *without
the cooperation of the first application*, as recited in the independent claims.

The Examiner contends that "Stucka uses the user interface server or
UIS to extract [a] modified layout component, such as change of the color or
the text, *from the working memory area*." (Ans. 12)(emphasis added).
However, while we agree that Stucka discloses that the UIS extracts data
from RAM (FF 3), we find that the first application (Application A) is very
much involved in doing so.

Stucka discloses that the initialize command is sent to the UIS with
various command parameter data required to initialize the user interface
sessions between application A and the UIS. (FF 2). Stucka further
discloses that the initialize command may be utilized multiple times *by the
application* to establish multiple user interface sessions. (FF 2). Therefore,

<div align="center">4</div>

even if the UIS extracts information from RAM 38, the application initializes the call to the UIS each time, thereby *providing cooperation* in extracting the data.

On this record, we find the evidence supports Appellants' contention that in order to access the UIS, an application has to be complied and linked with the Application Programming Interfaces (APIs) of the UIS. (Reply Br. 4). Without using the APIs of the UIS, we agree with Appellants that an application cannot access the UIS. (*Id.*).

Therefore, assuming *arguendo* that the RAM 38 of Stucka serves as the display buffer as argued by the Examiner, we agree with Appellants that the Examiner has not established how the first data is extracted from the display buffer *without cooperation of the first application at runtime*, as recited in the independent claims before us on appeal. We note that "absence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.,* 793 F.2d 1565, 1571 (Fed. Cir. 1986) (citation omitted).

Accordingly, for essentially the same reasons argued by Appellants, and for the reasons further discussed *supra*, we reverse the Examiner's anticipation rejection for each independent claim on appeal. Because we have reversed the Examiner's rejection of each independent claim on appeal, we also reverse the Examiner's anticipation rejections for dependent claims 2-8, 10-16, 18-24, 26, 28, 30, 32, 34, 36, and 38-40.

Regarding the § 103 rejection of claims 27, 31, and 35, the Examiner has not shown, and we do not find, that the secondary Kahl reference cures the aforementioned deficiencies of Stucka. Therefore, we reverse the § 103 rejection on the same grounds discussed *supra*.

DECISION

We reverse the Examiner's § 102 rejection of claims 1-26, 28-30, 32-34, and 36-40.

We reverse the Examiner's § 103 rejection of claims 27, 31, and 35.

ORDER

<u>REVERSED</u>

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